

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

For Online Publication Only

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JOAQUIN R. WINFIELD,

Plaintiff,

-against-

ROBERT DEROSSO, SGT. JOHN DOE, SGT.
NICHOLAS DESIMONE, WESLEY BEDNOSKY,
DENNIS HORL, & SUFFOLK COUNTY,

Defendants.
-----X

AZRACK, United States District Judge:

ORDER

07-CV-4570 (JMA) (AYS)

**FILED
CLERK**

9/30/2016 2:16 pm

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Before the Court is Magistrate Judge Shields's Report and Recommendation (the "R & R"), recommending that defendants' motion for summary judgment be denied. Timely objections have been filed. Having conducted a review of the full record and the applicable law, the Court adopts Judge Shields's Report and Recommendation in its entirety and orders that a hearing will be held on exhaustion.

Pro se plaintiff Joaquin Winfield has sued defendants pursuant to 42 U.S.C. § 1983 ("Section 1983"), alleging that he was physically assaulted and denied appropriate medical care while imprisoned at the Suffolk County Correctional Facility.

Defendants moved for summary judgment, arguing that plaintiff failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (the "PLRA"). Based on the parties' submissions, Judge Shields found that there were questions of material fact regarding whether plaintiff timely filed a grievance and whether the grievance procedure was available. As a result, Judge Shields recommended that I deny summary judgment.

In response to Judge Shields's R & R, defendants have produced additional evidence regarding plaintiff's alleged filing of a grievance. However, given the questions as to plaintiff's

credibility and that defendants submitted this evidence in their objection, the Court will hold a hearing on the issue of exhaustion. The Court will issue a separate scheduling order regarding the hearing.

Defendants are directed to serve a copy of this Order to plaintiff.

SO ORDERED.

Dated: September 30, 2016
Central Islip, New York

_____/s/ (JMA)
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE